(2)

Supreme Court, U.S.
FILED
MAR 28 2001
OFFICE OF THE CLERK

No. 00-1353

In The

Supreme Court of the United States

DENNIS E. NIXON and LORIE A. NIXON,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Pennsylvania

BRIEF IN OPPOSITION

DAVID C. GORMAN
District Attorney
Counsel of Record
Attorney for Respondent
423 Allegheny Street, Suite 421
Hollidaysburg, PA 16648
(814) 693-3010

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

I. DOES SHANNON NIXON HAVE A "RIGHT TO REFUSE MEDICAL CARE" SUCH AS TO TERMINATE OR LIMIT THE PARENTAL DUTY TO PROVIDE THE MOST BASIC OF NEEDS, THAT BEING THE PROVIDING OF MEDICAL CARE?

II. DOES THE PROSECUTION AND CONVICTION OF THE NIXONS INVOLVE THEIR FREEDOM OF RELIGION EXCEPT AS A CONSEQUENCE OF THEIR REFUSAL TO PROVIDE MEDICAL TREATMENT FOR SHANNON NIXON?

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents..... ii

Table of Authorities iii

Summary of the Argument..... 1

Argument 1

Reasons for Opposing the Granting of the Writ 1

I. SHANNON NIXON'S "RIGHT TO REFUSE MEDICAL CARE" HAS NEVER BEEN RECOGNIZED BY THE COURTS OF THIS LAND SUCH AS TO TERMINATE OR LIMIT THE PARENTAL DUTY TO PROVIDE THE MOST BASIC OF NEEDS, THAT BEING THE PROVIDING OF MEDICAL CARE..... 1

II. THE PROSECUTION AND CONVICTION OF THE NIXONS DOES NOT INVOLVE THEIR FREEDOM OF RELIGION EXCEPT AS A CONSEQUENCE OF THEIR RELIGIOUS REFUSAL TO PROVIDE MEDICAL TREATMENT FOR SHANNON NIXON 6

Conclusion 9

TABLE OF AUTHORITIES

Page

CASES

Bob Jones University v. United States, 461 U.S. 574, 76 L.Ed.2d 157, 103 S.Ct. 2017 (1983) 6

Hodgson v. Minnesota, 497 U.S. 417, 111 L.Ed.2d 344, 110 S.Ct. 2926 (1990) 2

Parham v. J.R., 442 U.S. 584, 61 L.Ed.2d 101, 99 S.Ct. 2493 (1979) 2

Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944) 1, 4, 6, 7, 8

Troxel v. Granville, 147 Led.2d 49 (2000) 2, 3

United States v. Lee, 455 U.S. 252, 71 L.Ed.2d 127, 102 S.Ct. 1051 (1982) 8

Walker v. Superior Court, 47 Cal.3d 112, 763 P.2d 852 (Cal. 1988) cert. denied 491 U.S. 905, 109 S.Ct. 3186, 105 L.Ed.2d 695 (1989) 4, 9

Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972) 2

SUMMARY OF THE ARGUMENT

What is at issue here is not the Nixons' right to free exercise of their religion. What is at issue and has been prosecuted is the consequences of the Nixons' abdication of their parental responsibilities. The State is allowed to limit certain constitutional rights, including the right to free exercise of religion when a compelling state interest is involved. There is no greater compelling state interest than that of the continued health and life of its most vulnerable citizens, its children. The law established by *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), has never been overruled but only refined in the numerous cases which follow it. In this case, where the life of Shannon Nixon was in obvious jeopardy, the Nixons had no choice but to seek medical attention or at the very least notify the authorities concerning the precarious position of their daughter.

ARGUMENT

REASONS FOR OPPOSING THE GRANTING OF THE WRIT

I. SHANNON NIXON'S "RIGHT TO REFUSE MEDICAL CARE" HAS NEVER BEEN RECOGNIZED BY THE COURTS OF THIS LAND SUCH AS TO TERMINATE OR LIMIT THE PARENTAL DUTY TO PROVIDE THE MOST BASIC OF NEEDS, THAT BEING THE PROVIDING OF MEDICAL CARE.

The United States Supreme Court has recognized a right of privacy. The right has its roots in a number of various constitutional provisions. As indicated by the

Petitioner's argument, there are numerous rights guaranteed to individual citizens. The right of privacy has been balanced against the need of the States to ensure that the children of adults are provided for, especially when those children are sick or at death's door. "The State has a strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." *Hodgson v. Minnesota*, 497 U.S. 417, 111 L.Ed.2d 344, 366-367, 110 S.Ct. 2926 (1990).

As stated by Justice Thomas in *Troxel v. Granville*, 147 L.Ed.2d 49, 70-71 (2000), "The constitutional protection against arbitrary state interference with parental right should not be extended to prevent the States from protecting children against the arbitrary exercise of parental authority that is not in fact motivated by an interest in the welfare of the child."[1]

It is apparent that a State has an ability to intervene in the parent-child relationship if such is to ensure the best interests of the child. Such an interest of the State is no more apparent than when the child is sick or at death's door. "Nonetheless, we have recognized that a State is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." *Parham v. J. R.*, 442 U.S. 584, 61 L.Ed.2d 101, 118, 99 S.Ct. 2493 (1979) (citations omitted).

---

[1] The Justice referenced the consequences which a parent's decision would have upon the child. *Wisconsin v. Yoder*, 406 U.S. 205, 32 L.Ed.2d 15, 92 S.Ct. 1526 (1972).

While the Courts have recognized that minors do have some constitutional rights and are not under the absolute tyranny of their parents, those rights are severely limited. Minors, quite simply due to the lack of maturity and life experiences, do not have free access to everything to which an adult is entitled. A State has a vital interest in restricting certain activities to adults, either those over the age of eighteen or twenty-one. *Troxel v. Granville*, supra. Among these rights restricted to adults is the privilege to drive a motorized vehicle, the right to own and possess a firearm, the right to vote, the right to enter into contracts, the right to give consent for medical treatment as well as other health and safety issues. The list of rights and/or privileges which are restricted to adults is a long list indeed.

In the criminal law, this is perhaps best exampled by the fact that a confession made by a juvenile without the benefit of a parental guardian is presumptively invalid. This is in recognition of the State's belief that a minor has neither the requisite maturity or life experience necessary to ensure that a minor's rights are protected. That belief recognizes that a parent has certain duties and obligations when it comes to providing for the care of their children.

One of and the foremost of these parental obligations or duties is to provide medical care and treatment for a child. This is especially true when the child is in dire straights and at death's door. This is exactly the situation which was presented to the Nixons at that moment on Friday morning when Shannon Nixon was in a coma. The criminal laws, particularly as in this case, the Involuntary

Manslaughter and the Endangering of Welfare of Children statutes, lay out the consequences which fall to someone such as a parent who abdicates this responsibility for whatever reason. *Walker v. Superior Court*, 47 Cal.3d 112, 763 P.2d 852 (Cal. 1988), *cert. denied*, 491 U.S. 905, 109 S.Ct. 3186, 105 L.Ed.2d 695 (1989), citing *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944). The State has such an interest in the minors' well-being that it can, should, and does penalize those who violate their parental duties. The mere fact that the Nixons exercise their freedom of religion should not impact upon their parental responsibilities to Shannon Nixon.

To quote from *Prince v. Massachusetts*, supra, at pages 652-653:

> But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. (citation omitted). And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well-being, the State as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the ladder to ill health or death. (citation omitted). The catalogue need not

> be lengthened. It is sufficient to show, what indeed appellant hardly disputes, that the State has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.

It is apparent that the State's interest in protecting the life of Shannon Nixon supercedes the Defendant's right to free exercise of their religion. It is apparent that the law is well settled in this area and that there is no real reason or basis upon which this Court should grant the writ.

Finally, the Respondent questions the ability of the Nixons to raise the constitutional rights of Shannon Nixon. If Shannon Nixon is a "mature minor" with a right to refuse medical care pursuant to her right of privacy, then how do the Nixons raise the constitutional rights of Shannon Nixon as a shield to absolve themselves of the consequences of their actions? There is no basis in State and/or Federal Law which gives another person the right to assert the rights of a third party. Quite simply, the Nixons have no standing to raise Shannon Nixon's constitutional rights, including the right to freedom, as a defense to the obligations upon them as parents to provide for the care and well-being of Shannon Nixon.

II. THE PROSECUTION AND CONVICTION OF THE NIXONS DOES NOT INVOLVE THEIR FREEDOM OF RELIGION EXCEPT AS A CONSEQUENCE OF THEIR REFUSAL TO PROVIDE MEDICAL TREATMENT FOR SHANNON NIXON.

As previously indicated, the prosecution of the Nixons and the decision of the Pennsylvania Supreme Court does not penalize the Petitioners' exercise of their religious beliefs. The conviction of the Nixons and the decision of the Pennsylvania Supreme Court impacts upon their parental obligations to care for their daughter. The prosecution does not directly impact upon the exercise of their religion as much as the consequences of that same religion. More importantly, as previously argued, what is being penalized is the abdication of the Nixons of their most basic parental duty to Shannon Nixon. The Commonwealth can limit the Nixons' right to free exercise of their religion when this absolute right infringes upon the well-being of their minor children. The Commonwealth has an obligation to step in and ensure that the only ones who make themselves out to be martyrs are those adults who have the requisite maturity and life experiences to make such a critical life decision. *Prince v. Massachusetts,* supra; *Bob Jones University v. United States,* 461 U.S. 574, 76 L.Ed.2d 157, 103 S.Ct. 2017 (1983). As the Court in *Bob Jones University v. United States,* supra, pages 180-181 stated, "This Court has long held the Free Exercise Clause of the First Amendment to mean absolute prohibition against the government regulations of religious beliefs (citations omitted). As interpreted by this

Court, moreover, the Free Exercise Clause provides substantial protection for lawful conduct grounded in religious belief (citations omitted). However, 'not all burdens on religion are unconstitutional . . . The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.' (citations omitted). On occasion, this Court has found certain governmental interests so compelling as to allow even regulations prohibiting religiously based conduct." *Prince v. Massachusetts,* supra.

It cannot be said that there is a more compelling governmental interest than preventing the death of one of its minor citizens.

While the Petitioners have a right to raise their children in accordance with their beliefs, that same right carries with it certain duties to ensure that the best interests of their children are met. The best interests of their children are surely met by the continued viability of the children's lives free from the restraints generated by their religion. If the parents have a right to raise their child as they see fit, then they have an obligation and duty to ensure that they are not abdicating that parental responsibility.

The mere fact that the regulations governing Children and Youth Services do not qualify the Nixons' actions as child abuse, does not preclude a criminal prosecution for those who have put their freedom of religion above the best interests of the child. The mere fact that the Children and Youth Services regulations removes the Nixons' conduct from the definition of child abuse, does not make their decisions any less culpable under the

criminal law. As previously indicated, a parent is or parents are allowed to make martyrs of themselves. However, when parents, by the result of their decisions, make martyrs of their children, then the State has a duty and obligation to step in and ensure that those children are protected. *Prince v. Massachusetts*, supra. This conflict between the freedom of religion and parental duties is one which is in continual debate throughout the United States. However, as stated by *United States v. Lee*, 455 U.S. 252, 71 L.Ed.2d 127, 132, 102 S.Ct. 1051 (1982), "The State may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest." (citations omitted). As previously stated, when the health and life of a child is at risk, the Courts have supported this overriding governmental interest in protecting its citizens. Consequently, when a parent's action or inaction endangers the welfare of a child or children, then that action and/or inaction can be penalized by the States.

There are limits to every right that one as a citizen enjoys. However, when the exercise of those rights affects others, then the State has an obligation and duty to step in. This is true even if the individual who is exercising the said right is an adult. If that is true of an adult, then how can it be that a parent is exempt from that intervention? One cannot imagine a more basic obligation of a State than the protection of its citizens. When the actions of an adult or non-action of an adult, whether it be parent or guardian, affect and impact upon the health and well-being of a child, then the State is not only within its rights but obligated to intervene to ensure the continued health and well-being of those same children. If, as in this case,

the Nixons abdicate those most basic of parental obligations, then they can indeed suffer the consequences of that abdication. *Walker v. Superior Court,* supra. There is no greater need for the fulfillment of parental duty by the Nixons then in that moment when Shannon Nixon is in a coma at death's door and unable to care for herself. In fact, it is impossible to tell what Shannon Nixon's request would have been on Friday morning when she was in a coma. There is no greater crystallization of that parental responsibility than in that moment when Shannon Nixon cannot take care of herself. The abdication of the Nixons' responsibility can, notwithstanding the rights to free exercise of religion, result in criminal prosecution and the consequences of the same.

CONCLUSION

For all the foregoing reasons, the Respondent respectfully pray that the Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,

David C. Gorman
District Attorney
Attorney for Respondent
423 Allegheny Street, Suite 421
Hollidaysburg, PA 16648
(814) 693-3010